

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL RODMAN, On Behalf of
Himself and All Others Similarly
Situating,

Plaintiff,

v.

SAFEWAY, INC.,

Defendant.

CASE NO.: 3:11-cv-03003 JST (JCS)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

Hearing Date: December 5, 2013
Time: 2:00 p.m.
Courtroom: 9 – 19th Floor
Judge: Hon. Jon S. Tigar
Trial Date:

Complaint Filed: June 17, 2011

On December 5, 2013 at 2:00 p.m., in Courtroom 9 of the United States District Court for the Northern District of California, the Court heard and considered Plaintiff's motion for an order certifying a plaintiff class.

The Court, having considered the papers and all admissible evidence submitted by both parties, finds that certification of the class as defined above is proper as Plaintiffs have established, based on the record before the Court, that all of the elements for class certification are met under Federal Rules of Civil Procedure 23(a) and 23(b)(1), (b)(2) and (b)(3).

1 NOW, therefore it is ORDERD AND ADJUDGED:

2 1. Plaintiff's Motion for Class Certification is hereby GRANTED.

3 2. The following class is hereby certified pursuant to Rule 23(b)(2) and
4 23(b)(3) of the Federal Rules of Civil Procedure:

5 All persons in the United States who signed up to purchase
6 groceries from Safeway.com and made on or more purchases
7 from April 12, 2010 to the present (the "Class").

8 Excluded from the Class are Defendant, as well as all employees
9 of the judges assigned to this action in this Court, their spouses
10 and any minor children living in their households, and other
11 persons within a third degree relationship to any such federal
12 judge; and finally, the entire jury venire called to for jury service
13 in relation to this lawsuit. Also excluded from the Class are any
14 attorneys or other employees of any law firms hired, retained
15 and/or appointed by or on behalf of the named Plaintiffs to
16 represent the named Plaintiffs and/or any proposed Class
17 members or proposed class in this lawsuit.

18 3. The Court also appoints Plaintiff Michael Rodman as class
19 representative. Pursuant to Fed. R. Civ. P. 23(g) the Court appoints the law firms
20 of Shepherd, Finkelman, Miller & Shah, LLP and Chimicles & Tikellis, LLP as
21 counsel for the Class.

22 4. This Court bases this certification and appointment order on the
23 following findings, all of which are amply supported by Plaintiff's well-pled
24 allegations and the evidence before the Court, including but not limited to the
25 Defendant's documents and the expert testimony:

26 (a) **Numerosity.** Plaintiffs have demonstrated that the "class is so
27 numerous that joinder of all members is impracticable" within the meaning of Rule
28 23(a)(1).

(b) **Commonality.** Rule 23(a)(2) requires that there be "questions
of law of fact common to the class." Plaintiff has satisfied the commonality
requirement here by identifying, the following common questions of law and fact:

1 (i) Did Safeway's Terms and Conditions promise Plaintiff and
2 the Class members parity between "online" and "in store" prices;

3 (ii) Did Safeway breach its price parity promise by overcharging
4 Plaintiff and Class members for groceries;

5 (iii) Were Safeway's price parity representations false and likely
6 to deceive the reasonable consumer;

7 (iv) Did all Class members experience the same Special Terms
8 and online marketing and advertising;

9 (v) Did Safeway breach its contract to Plaintiff and the Class
10 when it stated the Safeway.com grocery delivery service charge "the prices in the
11 store on the date your order is filled and delivered;" and

12 (vi) Would the reasonable person believe the misrepresentation
13 that the Safeway.com grocery delivery service would charge "the prices in the store
14 on the date your order is filled and delivered."

15 (c) **Typicality.** Pursuant to Rule 23(a)(3), Plaintiff must also show
16 that the "claims or defenses of the representative parties are typical of the claims or
17 defenses of the class." The same common questions identified above also serve to
18 satisfy Plaintiff's burden on typicality. The Court accordingly finds that typicality
19 is met here because Plaintiff and Class members seek the same remedies for similar
20 harms under the same legal theories.

21 (d) **Adequacy.** Pursuant to Rule 23(a)(4), the Court finds that the
22 "representative parties will fairly and adequately protect the interests of the Class."
23 The interests of the Plaintiff are fully-aligned with those of the Class, and his
24 chosen counsel are fully capable of effectively prosecuting this litigation.

25 5. The court further finds that certification is proper under Rule 23(b)(3).
26 The common questions identified above predominate over any individualized issues
27 concerning the allocation of damages. Further, a class action is superior to a series
28 of potentially thousands of individual suits. Even if it was feasible for individual

1 Class members to bring suit it would be inefficient to re-litigate the numerous
2 common questions in case after case. Moreover, the Court is unaware of any other
3 litigation concerning the controversy at issue herein, and the Court foresees no
4 manageability problems that would militate against class certification.

5 6. The parties are ordered to meet and confer over a class notice program
6 and to submit either a stipulation for approval by the Court or a motion raisi8ng any
7 disputed issues relative to that program by no later than December __, 2013.

8 IT IS SO ORDERED.

9 DATED: _ ____, 2013

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11 HONORABLE JON S. TIGAR
12 United States District Court Judge
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